IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.68 OF 2006

IN

NOTICE OF MOTION NO.3138 OF 2001

IN

SUIT NO.4443 OF 2001

Johra Jabin Shaikh Sabir ...Petitioner(orig.plaintiff).

vs.

1.Mrs.Kaniz Fatima Shaikh Akhtar and others. ...Respondents (orig.defendants).

Mr.Shekhar Shetye with A.S.Khandeparkar i/b. R.B.Jaiswal, for Petitioner.

Mr.Y.E.Mooman, for Respondent no.1.

Mr.Kedar Wagle i/b. Ms.S.M.Ghokhale, for Respondent no.2.

Mr.A.G.Toraskar, for Respondent no.3.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd January, 2007.

P.C.:-

1.. By this petition, the petitioner alleges that the respondent no.1 has willfully breached the statement made by the respondent no.1 which is recorded in order dated 8.1.2002. Perusal of the order dated 8.1.2002 shows that the respondent no.1 stated before the Court that she does not intend or propose to dispose of any of the properties as mentioned in Exhibit A to the plaint, she also does not intend to transfer or change tenancy or create any fresh tenancy in respect of the suit property until further orders of this Court. According to the petitioner, at Exhibit "A" to the plaint there is a schedule which describes the property which are the suit properties and also gives the list of the tenants. According to the petitioner, therefore, the respondent no.1 in her statement which is recorded in order dated 8.1.2002 has accepted that the tenants whose names are disclosed in the list of the tenants which is at Exhibit "A" to the plaint are the existing tenants on the date of the order dated 8.1.2002, and therefore, according to the petitioner the respondent no.1 has transferred the tenancy in breach of her statement in the order dated 8.1.2002.

2. The case of the respondent no.1 is that between the year 1999 and January,2002 the tenancies were transferred but once statement was made before the Court on 8.1.2002 tenancies were not

transferred. According to the respondent no.1 in her statement recorded in the order dated 8.1.2002 she did not state that the list of the tenants at Exhibit "A" to the plaint discloses the names of the tenants as on 8.1.2002. It is the case of the petitioner that though the respondent no.1 has transferred the tenancies after 8.1.2002, he has created the documents to show that the tenancies were transferred before 8.1.2002.

3. I have heard the learned Counsel appearing for both the sides. Perusal of the plaint shows that Exhibit A to the plaint is in two parts. The first part describes the properties and the second part gives the names of the tenants who are occupying those premises as tenants. Paragraph (1) of the order dated 8.1.2002 reads as under:-

> " Heard Mr.Jaiswal, learned counsel for the Plaintiff. Defendant no.1 – Mrs. Kaniz Fatima Shaikh Akhtar, who is present in person, makes a statement that she does not intend or propose to dispose of in any manner or alienate or part with or encumber the said properties as mentioned in Exhibit "A" to the Plaint and/or transfer or change tenancy or create any fresh tenancy in respect of the said properties till further orders. Statement of Defendant no.1 is accepted."

Perusal of the above quoted order shows that the respondent no.1 in

her statement referred to the properties mentioned in Exhibit A and not to the tenants' list. This position is clear, in my opinion, from the final order that was made in that notice of motion. The court has passed the final order in that notice of motion on 19.11.2005. In that order again the Court has recorded the statement of defendant no.1. Paragraphs 3 and 4 of that order are relevant which reads as under:-

> "3. Mr.Mooman, the learned counsel appearing on behalf of Defendant No.1 undertakes that pending hearing and final disposal of the suit, Defendant no.1 will not sell, transfer, mortgage, alienate or create any third party right, title and/or interest in, to, upon or in respect of the said buildings. Defendant no.1 further agrees and undertakes not to transfer the tenancy rights in respect of any part of the said buildings. Defendant no.1 is entitled to accept the surrender of tenancy in respect of the buildings but shall not be entitled to even deal with in any manner such premises, without the leave of the Court.
>
> 4. Defendant no.1 further agrees and undertakes to file a list of the tenants in respect of the said building as on the date of the ad-interim order dated 8.1.2002. Defendant no.1 shall also disclose on oath change in tenancies, if any, upto date. On behalf of Defendant no.1, the statement is made that there has been no change of tenancy after such order."

Perusal of the paragraph nos. 3 and 4 quoted above makes the position absolutely clear that the defendant no.1 in her statement did not refer to the list of tenants. Had she referred to the list of tenants in her statement recorded in order dated 8.1.2002 then there was no question of her filing the list of tenants as on 8.1.2002. The very fact that she has stated that she will file the list of tenants as on 8.1.2002 implies that between 1999 to which the list of tenants filed which the plaint refers and 8.1.2002 there was change in the tenancies. Therefore, in my opinion, the petitioner is not justified in saying that the change of tenancies that have been effected by the respondent no.1 are after 8.1.2002.

4. So far as the second aspect is concerned, the allegations of the petitioner that the respondent no.1 has created back dated documents in my opinion, cannot be accepted. It is possible that the documents may have come into existence in the circumstance which have been narrated by the respondent no.1 in detail in her affidavit. An action for contempt of the Court is a quasi criminal action, therefore, in my opinion, on the basis of the allegations which are made in the petition an action under the Contempt of Courts Act cannot be initiated against the respondent no.1 to the petition. The petition is, therefore, disposed of.